

***National Labor Relations Board***  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

**DATE:** October 7, 1994

**TO:** Joseph A. Szabo, Regional Director, Region 30

**FROM:** Robert E. Allen, Associate General Counsel, Division of Advice

**SUBJECT:** St. Luke's Medical Center, Case 30-CA-12538

177-8520-0800, 177-8520-4700, 177-8540-8050, 177-8580-8050

This Section 8(a)(1) case was submitted for advice as to whether the Charging Party RN was a Section 2(11) supervisor in light of the Supreme Court's Health Case [\(1\)](#) decision.

From early 1993 until her discharge later that year, the Charging Party worked as an RN in an intensive care unit for heart transplant patients 40 hours per week. During her weekend shifts, she was assigned to perform the job duties of charge nurse. A typical shift includes between 3 and 5 RN's, a nursing aide and a secretary, all of whom report to the unit manager or two other supervisors, and call the unit manager at home if they have problems or questions during the shift.

The Employer did not develop a charge nurse job description until August 1994, during the investigation of this case, although job descriptions for all other nursing positions had long existed. According to the Employer, the description indicates that charge nurses are supervisors because they function independently, in the manager's absence, to supervise the other RN's, aides, and secretaries in the unit, have the authority to, and engage in, the assignment of work to aides and secretaries, effectively recommend adequate staffing, monitor and evaluate the work of the unit employees, and effectively recommend the hiring, termination and discipline of employees. However, when requested by the Region to furnish evidence regarding the exercise of such authority, the Employer failed to do so. Indeed, the unit manager testified that she, not charge nurses, grants time off to or disciplines unit employees. When evaluating employees for possible wage increases or discipline, the manager takes recommendations from all unit employees, not just from the charge nurse. The only indicium of Section 2(11) status arguably present in this case is the assignment of employees.

On May 23, 1994, the Supreme Court held that the LPNs in Health Care were statutory supervisors because, if they responsibly directed employees "in connection with patient care," then they satisfied the Act's definition of supervisory functions taken "in the interest of the employer." The Court specifically limited its decision to the interpretation of the phrase "in the interest of the employer," and did not rule on Board or courts decisions interpreting other parts of Section 2(11). 114 S.Ct. at 1778. In response to the Board's argument that it needed "ample room to apply" to different categories of employees the ambiguous phrases "independent judgment" and "responsibility to direct", the Court stated, 114 S.Ct. at 1783:

That is no doubt true, but it is irrelevant in this particular case because interpretation of those phrases is not the underpinning of the Board's test. The Board instead has placed exclusive reliance on the "in the interest of the Employer" language in Section 2(11). With respect to that particular phrase, we find no ambiguity supporting the Board's position.

We conclude that the Charging Party is not a 2(11) supervisor. Almost all RN's have served as charge nurse, for which they receive no additional compensation. [\(2\)](#) Those who were interviewed by the Region agree with the Charging Party that the charge nurse completes staffing sheets assigning RN's on the following shift to an appropriate patient, and coordinates break times and patient assignments for RN's and aides on her shift. However, the charge nurse would make work assignments on her shift only after first discussing and getting feedback from other unit employees as to who was taking care of which patient and the current status of that patient. If a unit employee had to leave during a shift, the nurses would either divide up the duties of the nurse who left or the charge nurse would contact the nursing supervisor at home, who would then obtain a replacement. Moreover, although the charge nurses can ask aides who finished their duties to assist them or other RN's, it is standard

practice for RN's to request the assistance of other employees without asking the charge nurses. At the end of the charge nurse's shift, that charge nurse would meet with the next shift's employees to explain the status of the patients and what occurred during the last shift. The work assignment sheets prepared by the charge nurse were only recommendations from which the oncoming shift could deviate. Additionally, ensuring adequate staff levels for the next shift was based on a predetermined formula set by the manager.

Therefore, since all RN's perform charge nurse duties<sup>(3)</sup> and the assignment function of charge nurses either is based on an established hospital policy,<sup>(4)</sup> is a recommendation from which the following shift is free to deviate, or results from a collaboration with all other RN's and aides on the shift, we conclude that charge nurses, like the Charging Party, exercise no independent judgment in making assignments. Accordingly, the Charging Party is not a statutory supervisor.

R. E. A.

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<sup>1</sup> NLRB v. Health Care & Retirement Corp., \_\_\_ U.S. \_\_\_, 114 S.Ct. 1778, 146 LRRM 2121 (1994).

<sup>2</sup> At a staff meeting conducted by the unit manager in the Fall of 1993, the manager expressed her view that the charge nurse position should be eliminated since all RN's could function as one, and she wanted everyone to function independently.

<sup>3</sup> See National Broadcasting Co., 160 NLRB 1440, 1442 (1966) (non-health care case finding rotating "deskmen" not to be supervisors where, inter alia, five of six newsmen "regularly perform work as deskmen and as newsmen under deskmen").

<sup>4</sup> See Northcrest Nursing Home, 313 NLRB 491, 502, 504 (1993).